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TAGS: [EINV](#) [KTBD](#) [OPIC](#) [USTR](#) [TN](#)
SUBJECT: Tonga's Investment Climate Statement 2008

REF: SECSTATE 158802

[¶1](#). Paragraph 2 contains the text of the 2008 Investment Climate Statement for Tonga, per reftel.

[¶2](#). Begin text:

Openness to Foreign Investment

The Government of Tonga seeks to be welcoming to business and investors. Many Tongans have lived in or visited the United States, and American products are readily recognized.

Legislation simplifying foreign investment and streamlining business registration procedures came into effect April 1, 2007. Tonga became the 151st member of the WTO in June 2007. The primary tax collection method shifted from import duties to a broad-based consumption tax in 2005.

In November 2006, a pro-democracy demonstration degenerated into a large-scale riot. Rioters destroyed or damaged some 80% of the capital's central business district. Reconstruction has begun, aided in part by government secured funds providing low interest reconstruction loans.

Tonga's Industrial Incentives Development Scheme, which granted incentives and concessions for new projects in the industrial sector, was repealed in October 2007. The replacement Customs and Excise Regulations 2007, under which all industrial sector inputs will be except from customs duties, has yet to enter into force

The Ministry of Labour, Commerce and Industries (MLCI) administers policy on foreign investment. Every foreign investment business must obtain and hold a valid foreign investment registration certificate. The foreign investment certificate application fee is about US\$50 and can be obtained upon application to the Secretary of the MLCI. The certificate must be renewed annually.

The MLCI also processes company registrations. A company incorporated outside the Kingdom of Tonga that wishes to do business within the Kingdom must apply for incorporation under Part XVIII of the Companies Act 1995. When applying to register as an overseas company, a complete application must include the following:

- [¶1](#). Name of the overseas company, which must be reserved on prescribed Form 5. The name reservation fee is about US\$37.
- [¶2](#). Full names and residential addresses of company directors & company secretary at the time of application
- [¶3](#). The physical address of the place of business in Tonga
- [¶4](#). The full name and residential address of persons in Tonga being authorized to accept documents /communications on behalf of the overseas company
- [¶5](#). Evidence of incorporation in the country of registration
- [¶6](#). Copy of instrument constituting or defining the constitution of

the company

17. Copy of notice of reservation of name

18. Application fee of about US\$373

Partnerships and sole proprietors do not need to be registered but must have a business license. The cost of a business license varies according to the type of business activity. Current charges can be obtained from MLCI.

Every business or person carrying out a business in Tonga must have a valid business license. Business license applications by foreign investors must be accompanied by a valid foreign investment registration certificate. Applications for business licenses can be made to the Business Licensing Officer at the MLCI. Licenses are issued annually and expire on December 31 each year. An application for a new license costs about US\$38 and the annual renewal about US\$33.

Land cannot be bought or sold in Tonga, but may be leased through formal lease arrangements. Leases are usually 50 years in duration, although the law permits terms up to 99 years. The government has designated areas for small industry development, known as Small Industry Centers (SIC), on the two main islands in the Kingdom. Foreign investors are restricted by law from doing business in certain sectors. An updated list of restricted sectors can be obtained from the MLCI.

Conversion and Transfer Policies

In order to conserve foreign exchange, the National Reserve Bank of Tonga exercises some control on foreign receipts and payments. Repatriation of funds, including dividends, profits, capital gains, interest on capital and loan repayment and salaries, is permitted, with the following exceptions:

- when an industrial enterprise is partly financed by locally raised capital (including working capital), in which case the repatriation of funds will be related to the extent of foreign financing; that is, repatriation will be regulated on a pro-rata basis;

- in respect of capital gains, the amount eligible for repatriation will be restricted to the amount transferred inward through the banking system or by other approved methods; and

- expatriate employees will be allowed to remit overseas wages and salaries received in Tonga up to the amount on which income tax has been paid.

Obtaining foreign exchange is not difficult.

Expropriation and Compensation

Expropriation has not recently been an issue in Tonga.

Dispute Settlement

Tonga has a robust judicial system, staffed at the highest level by expatriate judges. The country's legal system is generally capable of enforcing contractual rights. Tonga does not have a formal bankruptcy law, and there have been no high-profile investment disputes over the last five years. Section 16(1) of the Business Licenses Act states that the provisions of the Arbitration Act 1996 of the United Kingdom shall apply to any arbitration under the Foreign Investment Act. The Business Licenses Act also states that the Convention on the Settlement of Investment Disputes shall have the force of law in Tonga, the country having ratified the convention on March 21, 1990.

Performance Requirements and Incentives

Investment incentives include:

- Guaranteed long-term space and land leasing in the Small Industries Center, a 12-acre industrial estate, located about one kilometer from the center of Nuku'alofa;

- Residential and work visas for foreign investors and their families for as long as the enterprise is in operation;

-- Priority for electricity, telephone, and water connections.

Technical and promotional assistance from the MLCI is available to help prospective investors identify, evaluate and set up industries. Companies and foreign investors can apply for the aforementioned business incentives as soon as they are granted business licenses. Once a business license/permit is obtained, the business can operate.

The government allows full ownership by a foreign investor in cases where manufacturing activities are using imported raw materials for export, or where the investments are too large for local investors. Each project is considered individually, however, the government generally encourages joint ventures.

Right to Private Ownership and Establishment

Both foreigners and domestic investors have equal rights for incorporating/establishing entities. The "Foreign Investment Act 2002," which was implemented on 1 April 2007, categorizes business activities for investment purposes into two categories. The Act identifies a Reserved List of 13 business activities reserved solely for Tongans and a Restricted List of business activities that foreigners may invest in under certain conditions. The Business Licenses Act 2002, which will also take effect on 1 April 2007, also has a Prohibited List.

I. Reserved List

1. Taxis
2. Passenger vehicles for hire
3. Used motor vehicle dealers
4. Retailing activity i.e distribution of groceries (food and household provisions) for final consumption
5. Wholesaling activity
6. Baking of white loaf bread
7. Tongan cultural activities, including:
 - i. folktales, folk poetry, and folk riddles
 - ii. folk songs and instrumental folk music
 - iii. folk dances and folk plays
 - iv. production of folk arts in particular, drawings, paintings, carvings, sculptures, woodwork, jewelry, handicrafts, costumes and indigenous textile
8. Raising of chicken for the production of eggs
9. Security business
10. Export of green and mature coconuts
11. Wiring and installation of residential and commercial buildings with capital investment of less than \$500,000.
12. Production/farming of:
 - i. root crops (yams, sweet yam, taro, sweet potato, cassava);
 - ii. squash;
 - iii. paper mulberry;
 - iv. pandanus; and
 - v. kava
13. Fishing activities comprising:
 - i. reef fishing
 - ii. inshore fishing within 12 nm (Zone C) in water less than 1000 meters
 - iii. bottom fishing in water depth less than 500m

II. Restricted List

The Restricted List specifies the business activities that a foreign investment business may carry out in Tonga subject to the conditions specified by the Regulations.

1. Commercial fishing comprising tuna fishing, bottom fishing in water deeper than 500m, other deep water fishing, and aquaculture.
2. Agricultural supply stores distributing seeds, fertilizers, chemicals.
3. Educational facilities
4. Medical or health facilities

III. Prohibited Activities (under the Business Licences Act)

1. Storage, disposal or transport of nuclear or toxic waste.
2. Pornography.
3. Export, import or production of any products that are prohibited under the laws of Tonga.
4. Prostitution.

15. Processing or export of endangered species.

16. Production of weapons of warfare.

Corporatization/Privatization of State-Owned Enterprises

A key aim of the government's economic reform program is to corporatize and eventually privatize the agencies that perform non-core government functions.

Protection of Property Rights

Tonga has legislation protecting patents, utility models, designs and trade marks., A bill on enforcement and border measures has been endorsed by the cabinet and is currently under consideration. This legislation aligns Tonga's laws with its WTO obligations and contains stricter border controls for counterfeit products. Currently, counterfeit products are widely available on the local market.

Transparency of Regulatory System

Although there are some difficulties with setting up a business, the Government has instituted reforms to make the procedures and processes much easier and quicker for investors. The World Bank lists Tonga as the 47th easiest country to do business in worldwide.

Publishing of draft bills for public comments is not practiced in Tonga.

Efficient Capital Markets and Portfolio Investment

Foreign investors are generally able to obtain credit on the local market. The Tonga Development Bank (TDB), with assets totaling T\$58,688,399 (2006), finances development projects that meet the TDB's criteria. In December, 2006 the TDB had a private sector loan portfolio of T\$39 million. There are also three international commercial banks, which together had T\$189.9 million in domestic private sector loans outstanding in June 2005.

Political Violence

In November 2006, political protests degenerated into a large-scale riot. Numerous buildings were attacked, looted and burned. Rioters particularly targeted businesses associated with the royal family and businesses owned by ethnic Chinese and Indians. Approximately 80% of Nuku'alofa's central business district was destroyed or significantly damaged. Violence on this scale is unprecedented, previous incidents being limited to isolated cases of vandalism and arson directed typically at symbols of government.

Subsequent to the November disturbances, the government declared a state of emergency, empowering the Tonga Defence Services to restore law and order within 24 hours of the events. Trials of the perpetrators and those accused of incitement are under way. The state of emergency has been repeatedly extended, most recently in December 2007 for another 30-day period. Total damages are estimated to be about US\$62 million. Businesses have begun reconstruction, aided in part by funds obtained by Tonga's government and used to provide low interest loans for reconstruction.

Corruption

Corruption has not been specifically identified as an obstacle to foreign investment. Corruption and bribery are criminalized and prosecuted. In a high-profile case in 2006, the Speaker of the Tongan Parliament was convicted and fined for bribery relating to the import of alcohol. Such measures appear to be impartially applied.

In July, the parliament passed legislation establishing an anti-corruption commissioner charged with investigating official corruption. There are no international non-governmental "watchdog" organizations represented locally, and the country is not included on Transparency International's Corruption Perceptions Index.

Bilateral Investment Agreements

Tonga is party to a bilateral investment treaty with the United Kingdom. It is not party to any other bilateral investment treaties.

OPIC and Other Investment Insurance Programs

Overseas Private Investment Corporation (OPIC) insurance is available to investors in Tonga, and OPIC provides political risk insurance, finance, direct loans and loan Guarantees.,

Labor

Although unemployment was officially placed at 5.2 percent in 2003, this does not account for the significant number of people underemployed. More than half of the men, and 38 percent of all people employed, work in the agricultural, forestry and fishing sectors. Only 59 percent of households include one or more wage earner. Women are playing an increasing role in the formal wage sector and make up more than one-third of the workforce.

Wages and salaries are comparatively low. Wages, salaries and other conditions of work in the private sector are a matter of direct negotiation between employers and workers. There are currently no trade unions in Tonga, although there is legislation permitting unions to form. The Public Servants Association operates as a de facto trade union for civil servants.

Local skilled labor is available in sufficient quantities to undertake most types of building work, except for some specialized skills and supervisory-level manpower, which is generally recruited from abroad.

Foreign-Trade Zones/Free Ports

Tonga does not operate any foreign trade zones or free port facilities.

Foreign Direct Investment Statistics

In its 2007 World Investment Report, the UN Conference on Trade and Development (UNCTAD) estimated 2006, foreign direct investment in Tonga sourced from transnational corporations to be US\$51 million, equal to 22.6 per cent of GDP. The inward flow of foreign direct investment for 2005 was approximately US\$17 million, up from approximately US\$5 million in 2004.

The U.S. Commerce Department's Bureau of Economic Analysis records no U.S.- sourced FDI stocks for Tonga.

According to the MLCI, over 150 foreign companies are currently registered in Tonga. Foreign businesses are largely in the retail sector, and many are owned by ethnic Chinese and Indians.

Web Resources

Regulatory authorities

Ministry of Labour, Commerce and Industries, P.O. Box 110, Nuku'alofa, Tonga. Tel: (676) 23 688; www.mlci.gov.to;

Ministry of Finance and Economic Development, Nuku'alofa, Tonga. Tel: (676) 23 066; www.revenue.gov.to
Banks

National Reserve Bank of Tonga, Private Bag #25, Nuku'alofa, Tonga. Tel (676) 24-057; www.reservebank.gov.to

Tonga Development Bank, Hala Fatafehi, Nuku'alofa, Tonga. Tel: (676) 23 333; Email: tdevbank@tdb.to; www.tdb.to

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